

REMARKS/ARGUMENTS

The claims as amended and newly added should not require an additional search. For example, Claim 1 has been amended to include a portion of the limitations previously set forth in Claims 6 and 8. Claim 10 has been amended to include a portion of the limitations of previous Claim 11. Newly added independent Claim 36 sets forth the range of crosslinkers previously set forth in Claim 11. Claim 37 has been newly added and more clearly sets forth the non-elastomeric containing asphalt, previously discussed in Applicants' last office action response and set forth in Claim 1 et seq. as previously presented. There is support for Claim 37 in the published application at Par. [0027], lines 1-4, and Par. [0029] and [0030], for example.

CLAIM REJECTIONS:**35 U.S.C. §112**

Claim 6 stands rejected under 35 U.S.C. §112. Claim 6 has been cancelled, and the step of adding a cross-linker has been added to Claim 1. This amendment should overcome this rejection.

35 U.S.C. §102(b)

Claims 1-3, 4, 6-12, 15-17, 22, 25, 27, 28, and 32-35 stand rejected under 35 U.S.C. §102(a or e) as being anticipated by U.S. Patent No. 6,767,939 (*Butler*). Claims 6 and 8 have been cancelled, and independent Claims 1, 10 and 27 have been amended to require more than 0.1 wt% of ZnO. The Butler '939 Patent does not teach a concentration of higher than 0.1 wt% of zinc oxide for any purpose (See specification generally and Table 3). Thus, the Butler '939 Patent does not anticipate the claims as amended which all require more than 0.1 wt% of zinc oxide. Further as previously stated, the '939 Butler patent does not teach the use of zinc oxide for reducing or eliminating hydrogen sulfide emissions.

Claims 1-3, 4, 6-12, 15-17, 22, 25, and 30-34 stand rejected under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 5,104,916 (*Trinh*). As the Examiner acknowledges, Trinh teaches the use of 0.03 to 1% of ZnO, and 0.05 to 1.4% of a vulcanization composition (for elastomers), less ZnO. As such, Claim 1 has been

amended to require less than 0.05wt% of a cross-linker and Claims 10 and 27 have been amended to require greater than 1 wt% ZnO. Thus, Trinh does not anticipate the claims as amended. Newly added independent Claim 36 sets forth the range of crosslinkers previously set forth in Claim 11. In this connection, Independent Claim 37 has been newly added and more clearly sets forth the non-elastomeric containing asphalt, previously discussed in Applicants' last office action response and set forth in Claim 1 et seq. as previously presented. Because Trinh teaches a ***vulcanization composition for elastomers*** and Claim 37 does not require or include elastomers, Trinh does not anticipate Claims 37-39. Further as previously stated, *Trinh* does not teach or disclose the use of zinc oxide to reduce hydrogen sulfide emissions. Therefore, no prima facie showing under 35 U.S.C. §102(b) has been made for such claims. For the same reasons, Claims 36-39 are also allowable.

35 U.S.C. §103(a)

Claims 23-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,767,939 (*Butler*).

Claims 23-24 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,104,916 (*Trinh*).

Those references have been discussed above. There is no suggestion to modify or combine the teachings of *Butler* and *Trinh* to arrive at Applicants' claimed invention. However, even if there was a suggestion to combine such references, *Butler* and *Trinh* still do not teach or Applicants' invention. Thus, no prima facie case of obviousness has been made, and such claims are allowable. For the same reasons, Claims 36-39 are also allowable.

35 U.S.C. §101 Statutory Double Patenting/Conflicting Claims – 37 CFR 1.78(b)

Various combinations of the claims have been rejected under 37 CFR 1.78(b) on the basis that the claims of the instant application conflict with the claims set forth several in U.S. patent applications and 1 issued patent.

More specifically, Claims 1, 4, 6-8, 10, 12, 17, 22, 25, 27, 28, 30-33, and 35 were provisionally rejected over Claims 1-3, 7, 9, 26, 41-43, and 49 of copending Application

No. 10/749,259. That application is currently on appeal and does not teach the use of zinc oxide to reduce H_2S emissions, as set forth in the amended claims.

Claims 1, 4, 6-8, 10, 12, 17, 22, 25, and 30-33 were provisionally rejected over Claims 22, 23, 28, 32, 26, and 41 of U.S. Appl. No. 10/888,563. That application has issued as U.S. Pat. No. 7,186,765. All of the independent Claims of the '765 Patent require greater than 0.05% of a crosslinker, and less than 1% of ZnO . Also, this reference does not teach the use of zinc oxide to reduce H_2S emissions, as set forth in the amended claims. Thus, this rejection has been overcome by the claim amendments.

Claims 1, 4, 17, 22, 25, 27, 28, 30-33, and 35 were provisionally rejected over Claims 11, 20, 31-33, 43, and 45-47 of U.S. Application No. 10/972,022. That application has been finally rejected, but is patentably distinct from the instant application since it requires the use of an inorganic acid and it does not teach the use of zinc oxide to reduce H_2S emissions.

Claims 1, 4, 6-8, 10, 12, 17, 22, 25, and 30-33 were provisionally rejected over Claims 1-4, 7, 9, 11, 14-18, and 20-22 of U.S. Application No. 11/020,774. That application has not yet been examined, but is patentably distinct from the instant application since it requires the addition of a phenol aldehyde resin crosslinker to the mixture.

Claims 1 and 4 were provisionally rejected over Claims 3 and 11 of U.S. Application No. 11/250,665. That application has not yet been examined, but covers a method of modifying a crude fraction (defined as any of the various refinery products produced from crude oil, either by atmospheric distillation or vacuum distillation, including fractions that have been treated by hydrocracking, catalytic cracking, thermal cracking or coking and those that have been desulfurized) with claims that do not currently include a crosslinker.

Thus only one of the foregoing patent applications has issued as a patent, and the claims therein are patentably distinct. The claims pending in the other pending applications are also patentably distinct.

Provisional Obviousness-Type Double Patenting

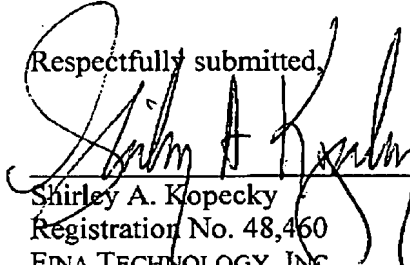
Various combinations of the claims have also been rejected on the basis that they are not patentably distinct from claims set forth in U.S. Application No. 10/749,259; U.S. Application No. 10/888,563 (now issued as 7,186,765); U.S. Application No. 10/972,022; U.S. Application No. 11/020,774; and U.S. Application No. 11/250,665.

In order to overcome such rejections, a terminal disclaimer for each of the foregoing cases was previously filed.

In conclusion, Applicants submit that the references cited in the Office Action, do not teach, show, or suggest the claimed features, and that the other rejections and objections have been overcome. Applicants respectfully submit that the amended claims are now in condition for allowance, and respectfully request the same.

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Respectfully submitted,


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